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Edgartown, Mass
Town Clerk's Office
June 21 2019
Rec'd for Record
AT 3:45 PM

COMMONWEALTH OF MASSACHUSETTS

DUKES, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION No. 1974CV00021

LYNN ALLEGAERT, JAMES SWARTZ,
JOSEPH SMITH, LOUISE NEUHOFF,
GEOFF CARABOOLAD, RICHARD ZANNINO,
and EDWIN BROOKS,

Plaintiffs,

v.

HARBOR VIEW HOTEL OWNER LLC, TOWN OF
EDGARTOWN, LEONARD JASON (IN HIS CAPACITY
AS BUILDING INSPECTOR AND ZONING
ENFORCEMENT OFFICER FOR THE TOWN OF
EDGARTOWN); AND, MARTIN TOMASSIAN,
CAROL GRANT, RICHARD KNIGHT,
JOHN MAGNUSON, NANCY WHIPPLE, AND
LISA MORRISON IN THEIR CAPACITY AS
MEMBERS (AND ALTERNATES) OF THE
ZONING BOARD OF APPEALS FOR THE TOWN OF
EDGARTOWN),

COMPLAINT

Defendants.

JURISDICTION

1. This action is brought pursuant to G.L. ch. 40A section 17 to appeal the decision of defendants Martin Tomassian, Carol Grant, Richard Knight, John Magnuson, Nancy Whipple, and Lisa Morrison, acting in their capacity as members (and alternates) of the Zoning Board of Appeals for the Town of

FILED
SUPERIOR COURT
COUNTY OF DUXES COUNTY

JUN 21 2019

REC'D
CLERK

Edgartown, MA (the "Board"), which decision improperly granted application of the defendants for a special permit.

2. This appeal is based on the Edgartown Zoning Bylaws and the terms and conditions of defendant Harbor View Hotel Owners LLC's current permit(s) which prohibit certain commercial activities as sought, applied for and obtained by the defendant in its request for a special permit. Furthermore, Plaintiffs state that they are all aggrieved abutters with standing; however, none of them was ever notified either of the defendants application before the ZBA or of the hearing and decision thereon. Plaintiffs were wrongfully deprived notice and due process when the zoning bylaws specifically prohibit the commercial structures and activities in the Residential R-5 district and Defendant Harbor View Hotel Owner LLC is not entitled to a permit. Plaintiffs were denied an opportunity to object and demand compliance with the Zoning Bylaws and Harbor View's current permit(s), a fundamentally unjust deprivation of due process. On or about June 13, 2019, the Plaintiffs first discovered the construction in process on the Defendant Harbor View's property.
3. When Plaintiffs inquired with the Zoning Officer, they were first informed of decision of the Edgartown ZBA granting a permit. Plaintiffs then learned that, on May 3, 2019, the ZBA had granted the Harbor View a special permit to construct and operate a nineteen-seat, roofed pool bar together with full service alcoholic beverage appliances and utilities (the "Tiki Bar") in the midst of their residentially-zoned neighborhood. Plaintiffs now appeal promptly to the Superior Court to direct the Zoning Board to conduct a properly noticed proceeding or to overturn and/or remand the decision May 3, 2019 decision of the Zoning Board of Appeals in accordance with the Zoning Bylaws and Harbor View's current permit(s). Paragraphs 1-4 of the decision states that Harbor View's application: 1) conforms to the bylaw, 2) is not more detrimental to the neighborhood, 3) will be smaller than the existing pool bar, 4) will not intensify the use and 5) that no abutters or members of the public object. These findings are demonstrably false. Accordingly, the decision of the Zoning Board of Appeals for the Town of Edgartown was based on a legally untenable ground and is arbitrary, capricious, whimsical, unreasonable, unlawful and unconstitutional; all an abuse of discretion which exceeds the authority of the Board.
4. This Appeal further seeks to annul the issuance of the

building permit for the "Tiki Bar" by the Building Inspector's Office for the Town of Edgartown on May 31, 2019, as provided in Mass.Gen.Laws ch. 40A, section 15.

5. Therefore, this complaint seeks a trial de novo and in the alternative to annul the Board's decision and remand the case to be reheard by the Zoning Board in a manner consistent with this court's decision. Furthermore, the complaint seeks the reversal of the building permit and for it to be annulled *ab initio*.

COMPLAINT

6. The Plaintiff Lynn Allegaert is an individual who owns and occupies the property located at 14 Thayer Street, Edgartown, Massachusetts which directly abuts the Defendant Harbor View's property. The permitted structure and activities will have a detrimental impact on her use and enjoyment of her property. Plaintiff was never provided with notice of the Harbor View's application for the Tiki Bar to the ZBA, the hearing(s) by the ZBA or the May 3, 2019 ZBA decision allowing the special permit for the construction of the Tiki Bar until construction began on or about June 13, 2019.
7. The Plaintiff James Swartz is an individual who owns and occupies the property located at 1 Starbuck Neck Rd., Edgartown, Massachusetts which is directly across the street abutting the road between his and the Defendant Harbor View's property. The permitted structure and activities will have a detrimental impact on his use and enjoyment of his property. Plaintiff was never provided with notice of the Harbor View's application for the Tiki Bar to the ZBA, the hearing(s) by the ZBA or the May 3, 2019 ZBA decision allowing the special permit for the construction of the Tiki Bar until construction began on or about June 13, 2019.
8. The Plaintiff Joseph Smith is an individual who owns and occupies the property located at 1 Ox Pond Meadow Rd., Edgartown, Massachusetts which less than 180 feet from the Defendant Harbor View's property. The permitted structure and activities will have a detrimental impact on his use and enjoyment of his property. Plaintiff was never provided with notice of the Harbor View's application for the Tiki Bar to the ZBA, the hearing(s) by the ZBA or the May 3, 2019 ZBA decision allowing the special permit for the construction of the Tiki Bar until construction began on or about June 13, 2019.

9. The Plaintiff Louise Neuhoﬀ is an individual who owns and occupies the property located at 14 Starbuck Neck Rd., Edgartown, Massachusetts which is located within 250 feet from the Defendant Harbor View's property. The permitted structure and activities will have a detrimental impact on her use and enjoyment of her property. Plaintiff was never provided with notice of the Harbor View's application for the Tiki Bar to the ZBA, the hearing(s) by the ZBA or the May 3, 2019 ZBA decision allowing the special permit for the construction of the Tiki Bar until construction began on or about June 13, 2019.
10. The Plaintiff Geoff Caraboolad is an individual who owns and occupies the property located at 63 Fuller Street, Edgartown, Massachusetts which directly abuts the Defendant Harbor View's property. The permitted structure and activities will have a detrimental impact on his use and enjoyment of his property. Plaintiff was never provided with notice of the Harbor View's application for the Tiki Bar to the ZBA, the hearing(s) by the ZBA or the May 3, 2019 ZBA decision allowing the special permit for the construction of the Tiki Bar until construction began on or about June 13, 2019.
11. The Plaintiff Richard Zannino is an individual who owns and occupies the property located at 18 Starbuck Neck Road, Edgartown, Massachusetts which is less than 150 feet from the Defendant Harbor View's property. The permitted structure and activities will have a detrimental impact on his use and enjoyment of his property. Plaintiff was never provided with notice of the Harbor View's application for the Tiki Bar to the ZBA, the hearing(s) by the ZBA or the May 3, 2019 ZBA decision allowing the special permit for the construction of the Tiki Bar until construction began on or about June 13, 2019.
12. The Plaintiff Edwin Brooks is an individual who owns and occupies the property located at 40 Fuller Street, Edgartown, Massachusetts which less than 100 feet from the Defendant Harbor View's property. The permitted structure and activities will have a detrimental impact on his use and enjoyment of his property. Plaintiff was never provided with notice of the Harbor View's application for the Tiki Bar to the ZBA, the hearing(s) by the ZBA or the May 3, 2019 ZBA decision allowing the special permit for the construction of the Tiki Bar until construction began on or about June 13, 2019.

13. The Defendant Harbor View Hotel Owner LLC, is a Delaware limited liability company, with a mailing address c/o Upland Capital Corporation, 745 Boylston Street, Boston, MA 02116 and doing business as Harbor View Hotel. The Defendant owns and operates a hotel on a pre-existing, non conforming lot located in the R-5 residential zoning district. Defendant is the applicant who obtained the special permit to build and operate the Tiki Bar in a residential neighborhood by the Defendant Zoning Board for the Town of Edgartown and also was granted a building permit for the Tiki Bar structure from the Building Inspector for the Town of Edgartown. Defendant's lot is located wholly within the residential "R-5" zoning district and is thereby restricted to residential uses.
14. The Defendant Leonard Jason is the Building Inspector and Zoning Enforcement Officer for the Town of Edgartown whose office is located at 70 Main Street, Edgartown, Massachusetts. He is sued in his capacities as Building Inspector and Zoning Enforcement Officers for the Plaintiff's appeal of the issuance of a building permit to the Defendant Harbor View for the construction of the Tiki Bar on May 31, 2019.
15. The Defendant, Town of Edgartown, is a municipality organized under the laws of the Commonwealth of Massachusetts and whose office is located at Edgartown Town Hall, 70 Main Street, Edgartown, County of Dukes County, Massachusetts.
16. The Defendants, Martin Tomassian, Carol Grant, Richard Knight, John Magnuson, Nancy Whipple, and Lisa Morrison are all individuals, residents of the Town of Edgartown, and are all duly elected or appointed members (or alternate members) of the Zoning Board of Appeals for the Town of Edgartown ("the "Board"). They are sued in their capacity as members (or alternates) of the Board, which office is located at the 70 Main Street, Edgartown, Massachusetts.
17. On or about June 13, 2019, the Plaintiffs first noticed that defendant Harbor View was constructing a structure with a roof in close proximity to their homes. Upon making inquiries with the building inspector's office, they were informed for the first time that on May 3, 2019 the Zoning Board of Appeals for the Town of Edgartown had granted the Defendant Harbor View a special permit to construct and operate a nineteen-seat, roofed pool bar together with full

service alcoholic beverage appliances and utilities (the "Tiki Bar") in the midst of their residentially-zoned neighborhood. A certified copy of the Zoning Board of Appeal's decision is attached at Exhibit "1" hereto.

18. Plaintiffs made an attempt to resolve this matter directly with the chairperson of the Zoning Board of Appeals and the Harbor View, all to no avail. Accordingly, on June 15, 2019, Plaintiffs wrote a letter to the Defendant Town of Edgartown and the Defendant Zoning Board of Appeals. A true and correct copy of the plaintiffs' June 15, 2019 letter is attached hereto at Exhibit "2".
19. During the course of their inquiry, plaintiffs also discovered the plans for the structure and that, on or about May 31, 2019, the Building Inspector for the Town of Edgartown issued a building permit allowing for the construction of the Tiki Bar. A true and correct copy of the plans for the Tiki Bar are attached hereto at Exhibit "3". A true and correct copy of the building permit issued for the Tiki Bar is attached hereto at Exhibit "4".

COUNT I

Appeal of Zoning Board of Appeals Decision
under G.L. ch. 40A § 17.

20. Plaintiffs reallege paragraphs 1 through 19 of this complaint, and incorporate these paragraphs as if fully set forth herein.
21. On March 23, 2016, on May 3, 2019 the Zoning Board of Appeals for the Town of Edgartown granted the Defendant Harbor View a special permit to construct and operate a nineteen-seat, roofed pool bar together with full service alcoholic beverage appliances and utilities (the "Tiki Bar") in the midst of their residentially-zoned neighborhood.
22. Plaintiffs' and Defendant Harbor View's properties are all located within the R-5 residential zone. See Exhibit "5", Edgartown Zoning Map. The zoning bylaws pertaining to the R-5 residential zone further incorporate the regulations of the R-60 zone by reference. See Exhibit "6", Article VI Edgartown Zoning ByLaws R-5 Residential District. See Exhibit "7", Article IV Edgartown Zoning ByLaws R-60 Residential District.
23. The Harbor View Hotel and its property is a pre-existing non

service alcoholic beverage appliances and utilities (the "Tiki Bar") in the midst of their residentially-zoned neighborhood. A certified copy of the Zoning Board of Appeal's decision is attached at Exhibit "1" hereto.

18. Plaintiffs made an attempt to resolve this matter directly with the chairperson of the Zoning Board of Appeals and the Harbor View, all to no avail. Accordingly, on June 15, 2019, Plaintiffs wrote a letter to the Defendant Town of Edgartown and the Defendant Zoning Board of Appeals. A true and correct copy of the plaintiffs' June 15, 2019 letter is attached hereto at Exhibit "2".
19. During the course of their inquiry, plaintiffs also discovered the plans for the structure and that, on or about May 31, 2019, the Building Inspector for the Town of Edgartown issued a building permit allowing for the construction of the Tiki Bar. A true and correct copy of the plans for the Tiki Bar are attached hereto at Exhibit "3". A true and correct copy of the building permit issued for the Tiki Bar is attached hereto at Exhibit "4".

COUNT I

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under G.L. ch. 40A § 17.

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22. Plaintiffs' and Defendant Harbor View's properties are all located within the R-5 residential zone. See Exhibit "5", Edgartown Zoning Map. The zoning bylaws pertaining to the R-5 residential zone further incorporate the regulations of the R-60 zone by reference. See Exhibit "6", Article VI Edgartown Zoning ByLaws R-5 Residential District. See Exhibit "7", Article IV Edgartown Zoning ByLaws R-60 Residential District.
23. The Harbor View Hotel and its property is a pre-existing non

conforming property located in a residentially zoned neighborhood. See Exhibit "1" May 3, 2019 Zoning Board decision, paragraph 3 "A special permit is required because the construction of the pool bar constitutes a change or alteration of a nonconforming use (commercial) in a residential neighborhood."

24. Accordingly, the Harbor Views application was made pursuant to Article X, section 11.9 of the Edgartown Zoning Bylaws, a true and correct copy of which is attached at Exhibit "8", Article X Edgartown Zoning Bylaws, Section 11.9 Nonconforming Structures and Uses.
25. More specifically, the Harbor View made its special permit application in conformance with Section 11.9, subsection (f), which provides as follows:

The Special Permit Granting Authority [ZBA] shall have the authority to grant a special permit for the change, extension or alteration of a preexisting, nonconforming structure, or for the construction of structures which are accessory to preexisting nonconforming structure, where such change, extension, alteration, or construction will not comply with the applicable provisions of the zoning bylaw; provided, however, that the Special Permit granting Authority [ZBA] finds after a public hearing that other lots in the neighborhood have been previously developed by the construction of buildings or structures in such a manner as to have resulted in similar nonconformities, and that the proposed expansion, extension, alteration, or construction will not be more objectionable or substantially more detrimental to the character of the neighborhood than the original structure.

26. The original pool bar was attached in an inner pool area, closely nestled by the hotel structure, and noise was buffered by the surrounding structures. See Exhibit "9" Harbor View Hotel Birdseye View. The proposed Tiki Bar is to be located approximately 120 feet away from the original location, and covers a much larger, unobstructed "green area" that currently serves as a vegetative buffer. A portion of the original "green area" has been paved over with flag stones as part of the Tiki Bar. In the new location sound will carry and the Tiki Bar will be on full display to the surrounding residents and from the public way. The proposed 19 seat Tiki Bar covers an area of 21 x 16 feet, with a 17-and-a-half-foot-tall, cupola roof. See

copy of the plans for the Tiki Bar are attached hereto at Exhibit "3". There are no remotely similar, free-standing structures located in the neighborhood.

27. The "green area" that is the site of the Tiki Bar is subject to a prior decision of the Edgartown Zoning Board of Appeals dated March 6, 1992. That decision states restrictions in part, "5) There will be no lighting of the green, lights will be in the tents only. 6) There will be no more than three night functions per week on the green. 7) There will be no more than three daytime functions per week on the green." A true and correct copy of the Decision of the Zoning Board of Appeals dated March 6, 1992, attached hereto at Exhibit "10". The reason for these restrictions was to reduce the impact such activity would have on the surrounding neighborhood.
28. Paragraphs 1-4 of the May 3, 2019 decision states that Harbor View's application: 1) conforms to the bylaw, 2) is not more detrimental to the neighborhood, 3) will be smaller than the existing pool bar, 4) will not intensify the use and 5) that no abutters or members of the public object.
29. These findings are demonstrably false. Accordingly, the decision of the Zoning Board of Appeals for the Town of Edgartown was based on a legally untenable ground and is arbitrary, capricious, whimsical, unreasonable, unlawful and unconstitutional; all an abuse of discretion which exceeds the authority of the Board.
30. Plaintiff's were deprived actual, proper notice of the Defendant Harbor View's application, the ZBA's hearing(s) on the application and the decision granting the special permit along with the May 3, 2019 filing with the town clerk until they discovered the construction of the Tiki Bar on Harbor View property on June 13, 2009. By this time, the twenty-day appeal period indicated by Mass.Gen.Laws. Ch. 40A, section 15 had expired.
31. Mass.Gen.Laws Ch.40A, Section 15 provides that notice of the decision of the zoning board "shall be mailed forthwith to the petitioner, applicant or appellant, to the parties in interest designated in section eleven, and to every person present at the hearing who requested that notice be sent to him and stated the address to which such notice was to be sent." Plaintiffs, as owners of the land affected, are among the individuals entitled to be mailed notice of a decision under Mass.Gen.Laws Ch.40A Section 15. However,

none of the Plaintiffs ever received notice of the May 3, 2019 decision by mail.

32. Mass.Gen.Laws chapter 40A, section 9 provides that upon application for a special permit filed with the special permit granting authority (such as the zoning board), the authority "shall hold a public hearing, for which notice has been given as provided in section eleven." G. L. c. 40A, § 9
33. Mass.Gen.Laws chapter 40A, section 11 states that in all cases where notice of a public hearing is required, notice shall be sent by mail, postage prepaid to "parties in interest" which the statute defines as "abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the petitioner..." Plaintiffs as owners of the land as described in section 11 are among the individuals entitled to be mailed notice of the hearing under Mass.Gen.Laws Ch.40A Section 17. However, none of the Plaintiffs ever received notice of hearing(s) by mail or had any knowledge of the hearing(s). None of the Plaintiffs received notice of the public hearing(s) the board conducted on Harbor View's application for a special permit for construction of the Tiki Bar as required by G. L. c. 40A, § 11.
34. Mass.Gen.Laws ch. 40A, § 17, establishes a twenty-day window within which such an appeal from a Zoning Board decision must be filed. However, if an appeal is grounded in a defect of notice as required by G. L. c. 40A, § 11, litigants are entitled an expanded filing period of ninety days. G. L. c. 40A, § 17. Where the person aggrieved received defective notice of the public hearing, the statute expands the limitations period to "ninety days after the decision has been filed in the office of the city or town clerk." *Id.* Finally, the Court of Appeals has recognized that in the case of "complete failure of notice of a public hearing in advance of the granting of a special permit, the ninety-day limitation in G. L. c. 40A, § 17, should not be deemed to run until the abutter has notice of the project to which he objects." Kramer v. Zoning Bd. of Appeals of Somerville, 65 Mass. App. Ct. 186, 193-194, 837 N.E.2d 1147 (2005).
35. In the present matter, Plaintiffs allege that a defect in the notice of the hearing deprived them of notice of the hearing by mail, and that, as a result of such defect, they were not made aware of the hearing, or the zoning board's decision on the hearing, until they observed the

construction of the Tiki Bar on the Harbor View property on June 13, 2019. Plaintiffs are filing this appeal on June 21, only eight days after that discovery. In these circumstances, the appeal period runs 90 days from the May 3, 2019 filing of the ZBA's decision, which is August 1, 2019. Therefore, the appeal is timely and not subject to dismissal.

36. The ZBA's granting of Defendant Harbor View's permit application exceeded the ZBA's authority under M.G.L. c 40A.
37. The ZBA abused its discretion in granting the Defendant Harbor View's application for a new bar that is inconsistent with the residential character of the neighborhood.
38. Paragraphs 1-4 of the decision states that Harbor View's application: 1) conforms to the bylaw, 2) is not more detrimental to the neighborhood, 3) will be smaller than the existing pool bar, 4) will not intensify the use and 5) that no abutters or members of the public object. These findings are demonstrably false. Accordingly, the decision of the Zoning Board of Appeals for the Town of Edgartown was based on a legally untenable ground and is arbitrary, capricious, whimsical, unreasonable, unlawful and unconstitutional; all an abuse of discretion which exceeds the authority of the Board.

COUNT II

Appeal of Issuance of Building Permit
under G.L. ch. 40A §15.

39. Plaintiffs reallege paragraphs 1 through 38 of this complaint, and incorporate these paragraphs as if fully set forth herein.
40. This Appeal further seeks to annul the May 31, 2019 issuance of the building permit for the Tiki Bar by the Building Inspector's Office for the Town of Edgartown, as provided in Mass.Gen.Laws ch. 40A, section 15.
41. The commercial, outdoor Tiki Bar is not a structure which is permitted under the Zoning Bylaws of the Town of Edgartown in a residential zone.
42. Accordingly, the Building Inspector for the Town of Edgartown failed to comply with the mandatory provisions of the Zoning Act, and the permit should be annulled.

COUNT III

Nuisance

(Against Defendant Harbor View Hotel Owner LLC Only)

43. Plaintiffs repeat and incorporate by reference the foregoing allegations of paragraphs 1 through 42 of Plaintiffs' Complaint as if fully set forth herein.
44. Plaintiffs have suffered and have been denied the reasonable use and enjoyment of their properties by direct result of Harbor View's construction and potential operation of a Tiki Bar at the beginning of the summer season in an expensive residential resort community.
45. The construction and operation noise, odors, runoff, lights, fumes, and combinations of them, early in the morning, throughout the day and into the evening are annoying, injurious to the Plaintiffs' health and comfort and are unreasonable.

COUNT IV

Emotional Distress

(Against Defendants Harbor View Hotel Owner LLC only)

46. Plaintiffs repeat and incorporate by reference the foregoing allegations of paragraphs 1 through 45 of Plaintiffs' Complaint as if fully set forth herein.
47. Plaintiffs state that the activities of Defendants Harbor View Hotel Owner LLC, including, but not limited to, constructing a commercial Tiki Bar on the green in full view of the Plaintiffs properties at the height of the summer season, annoying the Plaintiffs, and Defendant's refusal to mitigate or in any manner to remedy the nuisance and noxious activities on Defendant's property, have caused certain Plaintiffs to suffer considerable emotional distress.
48. A reasonable person in the position of the Defendant should have known that such construction and commercial activities on the green during the height of the summer season, including subjecting Plaintiffs to unreasonable noise, odors and activity, would cause a person in Plaintiffs' position to suffer considerable emotional distress.

49. Certain plaintiffs have suffered considerable emotional distress caused by the aforementioned activities of Defendant Harbor View Hotel Owner LLC. Plaintiffs have endured suffering resulting from the defendant's conduct.

PRAYER

WHEREFORE, Plaintiffs respectfully request the following relief:

AS TO COUNT I:

1. For a trial de novo.
2. For a judgment annulling the Edgartown Board of Appeals' decision, or to make such other decree as justice and equity may require, including, but not limited to, a properly noticed hearing.
3. For an order requiring the Defendants to enforce and abide by the Edgartown Zoning Ordinances.
4. For an order remanding the case to the Board, requiring the Board to issue a decision which protects and preserves Plaintiffs' rights as aggrieved parties, abutters and landowners under the Edgartown Zoning Bylaws and the prior permit(s) issued by the ZBA.
5. For a Temporary Restraining Order enjoining the defendant from any further construction, development or operation of the Tiki Bar.
6. For a Preliminary Injunction enjoining the defendant from any further construction, development or operation of the Tiki Bar.
7. For a Permanent Injunction enjoining the defendant from any further construction, development or operation of the Tiki Bar.
8. For such other and further relief which this Court deems just and proper.

AS TO COUNT II:

1. For the building permit to be revoked, annulled or suspended and for an Order compelling the Building Inspector to uphold the Zoning Ordinance as required by law.
2. For such other and further relief which this Court deems just and proper.

AS TO COUNT III:

1. For damages according to proof.
2. For interest at the legal rate.
3. For a Temporary Restraining Order enjoining the

defendant from any further construction, development or operation of the Tiki Bar.

4. For a Preliminary Injunction enjoining the defendant from any further construction, development or operation of the Tiki Bar.

5. For a Permanent Injunction enjoining the defendant from any further construction, development or operation of the Tiki Bar.

6. For a Permanent Injunction ordering defendant to abate the nuisance.

7. For such other and further relief which this Court deems just and proper.

AS TO COUNT IV:

1. For damages according to proof.

2. For interest at the legal rate.

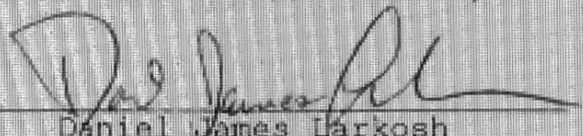
3. For a Permanent Injunction ordering defendants to cease and desist the harassment and annoyance of plaintiffs.

4. For such other and further relief which this Court deems just and proper.

Respectfully submitted,
Plaintiffs Lynn Allegaert, James
Swartz, Joseph Smith, Louise
Neuhoff, Geoff Caraboolad, Richard
Zannino and Edwin Brooks,

Date: June 21, 2019

BY



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Vineyard haven, MA 02568

VERIFICATION

I, the undersigned Plaintiff, have personal knowledge of all of the facts stated above and hereby swear under the pains and penalties of perjury that all of those facts are true and

accurate.

Plaintiffs:

Lynn Allegaert
Lynn Allegaert

James Swartz
James Swartz

Joseph Smith
Joseph Smith

Louise Neuhoff
Louise Neuhoff

Geoff Caraboolad
Geoff Caraboolad

Richard Zannino
Richard Zannino

Edwin Brooks
Edwin Brooks

accurate.

Plaintiffs:

Lynn Allegaert

James Swartz

Joseph Smith

Louise Neuhoff

Geoff Caraboolad

Richard Zannino
Richard Zannino

Edwin Brooks



*Town of Edgartown
Zoning Board of Appeals
Post Office Box 1063
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508-627-6160

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508-627-6193

Case # 14-2019
Date Filed: 10 April 2019

Edgartown, Mass
Town Clerk's Office
MAY 3, 2019
Filed for Record
AT 3:17 PM

**DECISION OF THE ZONING BOARD OF APPEALS
ON THE REQUEST FOR A SPECIAL PERMIT**

Applicant/Owner: Harborview Hotel Owner LLC
Book 1484 Page 46

At a meeting held in the Selectmen's Room, Town Hall, on Wednesday, 1 May 2019, the Edgartown Zoning Board of Appeals voted unanimously (5-0) to grant a special permit under section 11.9 (f) of the zoning bylaw to permit the construction of a replacement pool bar at the Harborview Hotel located at 131 North Water Street, Assr. Pcl. 20B-107 in the R-5 Residential District - all according to the plans and elevations submitted by Beacon Architectural Associates dated 29 March 2019 and 5 March 2019.

1. The proposal conforms to the requirements of the bylaw and will not be more detrimental to the neighborhood than the existing pool bar. The new pool bar will be smaller in size than the existing pool bar and located on the opposite side of the pool area.
2. The Harborview was granted a special permit in 1992 (Case No. 18-92) to serve food and beverages in the pool area.
3. A special permit is required because the construction of the pool bar constitutes a change or alteration of a nonconforming use (commercial) in a residential neighborhood. The board finds that the increase of two seats at the bar will not result in a significant intensification in the use of the structure or have any appreciable impact on town services.
4. No abutters, town board or departments, or members of the general public had any objection to the project.

This decision of the Board of Appeals and a record of proceedings are on file in the Zoning Board office and in the office of the Town Clerk, Town Hall under Case No. 14-2019.

Board of Appeals,

Lisa C. Morrison
Lisa C. Morrison, Assistant

Note: This decision was filed in the office of the Town Clerk on 4 May 2019. Appeals, if any, should be made pursuant to Section 17 of Chapter 40A of the Massachusetts General Laws and should be filed within 20 days of the filing of this decision in the office of the Town Clerk.

June 10, 2019

I hereby certify that no appeal has been filed in the twenty-day period following the date of filing this decision.

Attest

Thomas W. Vint



JUN 19, 2019
TRUE COPY ATTEST
Anna D. Pedersen
TOWN CLERK OF
EDGARTOWN, MA.

June 15, 2019

Town of Edgartown
Zoning Board of Appeals
Post Office Box 1065
Edgartown, MA 02539

received
17 June 19

To: Zoning Board of Appeals Members
Re: Relocation of the pool bar at the Harbor View Hotel

On or about June 13 it came to the attention of the undersigned that a tiki bar was being constructed beyond the pool area in the green space at the Harbor View Hotel.

The undersigned neighbors and abutters never received physical notice via a mailing that a public hearing before the ZBA had been scheduled relative to said matter. If the undersigned had received a notice via a mailing they would have exercised their right to be heard on said matter.

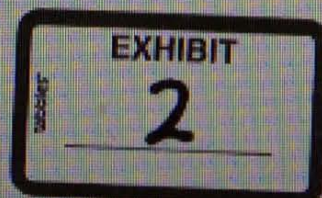
The undersigned want to exercise their right to be heard before the ZBA via a public hearing on said matter. Therefore the undersigned ask that the Harbor View be temporarily enjoined from continuing construction on said tiki bar until such time that the undersigned neighbors and abutters are in receipt of a mailing setting forth a date for a public hearing by which they can be heard on said matter and the ZBA makes a ruling thereafter.

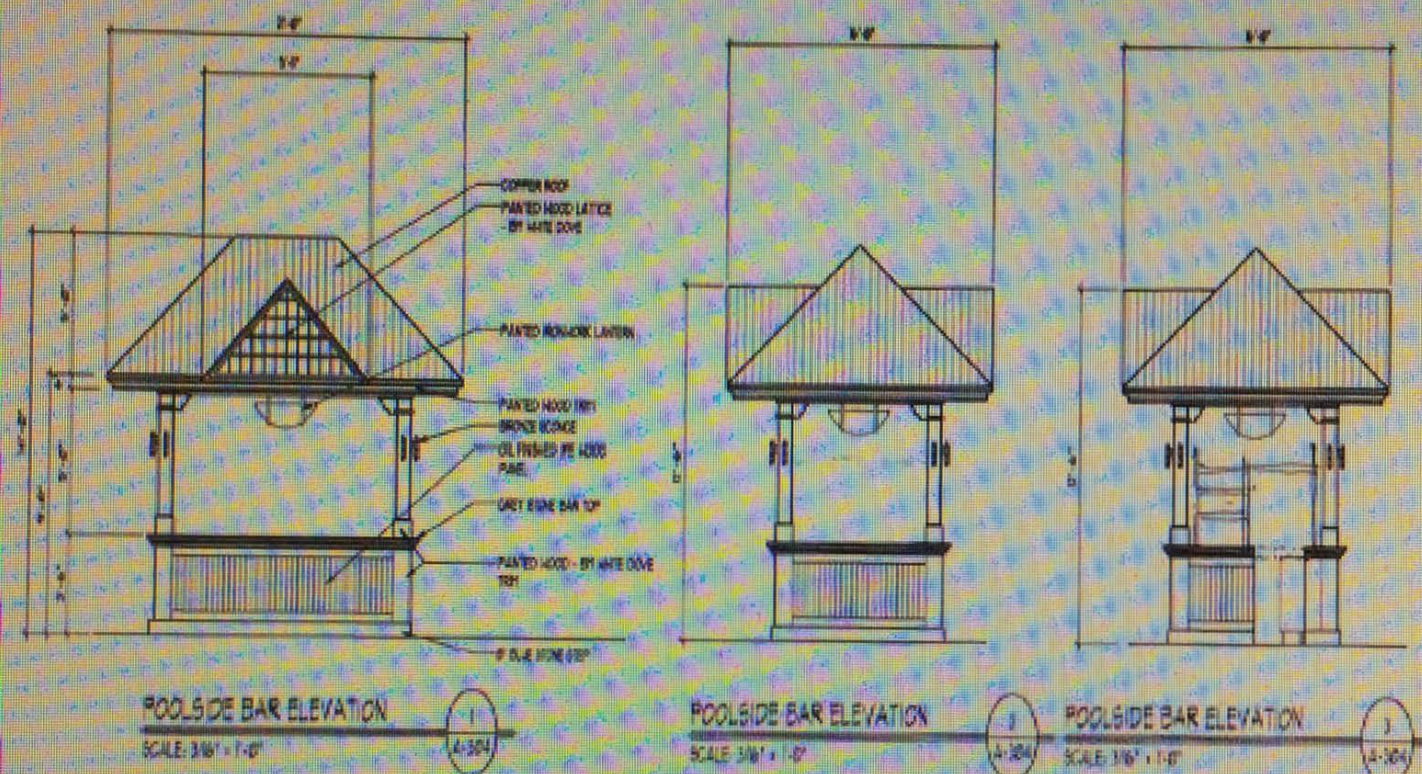
If the undersigned are denied their request for a temporary injunction and a public hearing irreparable harm will be suffered.

Sincerely,

Lynn Allegaert
Jim Swartz
Louise Neuhoff
Joe Smith

Geoff Caraboolad
Bob and Linda Forrester
Rich Zannino





EACON

TEXTURAL ASSOCIATES

145 South Street
 Boston, MA 02111
 T-617-557-7171
 WWW.EACONARCHITECTS.COM

DATE: 08/20/11
 SCALE: AS NOTED
 DRAWN: TAC

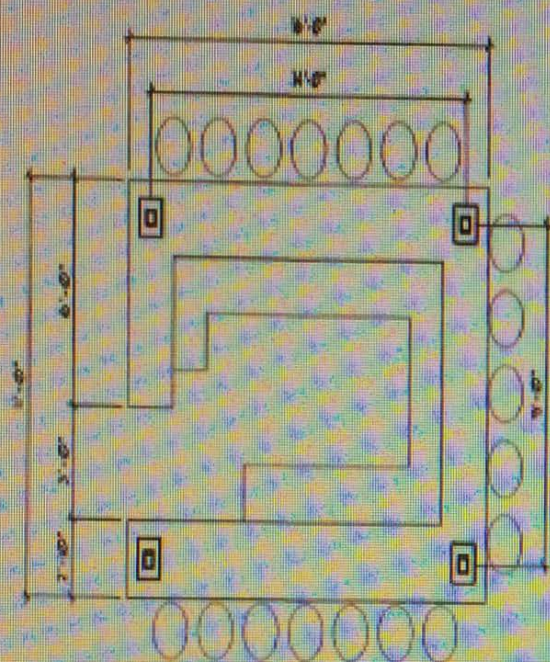
Harbor View Hotel
 Mayhew Cottage

Mayhew Cottage

Mayhew Cottage
 Poolside Bar
 Elevations

NO. 1
 SCALE: 3/16"

A-304



POOLSIDE BAR CONCEPTUAL FLOOR PLAN

SCALE: 1/4" = 1'-0"



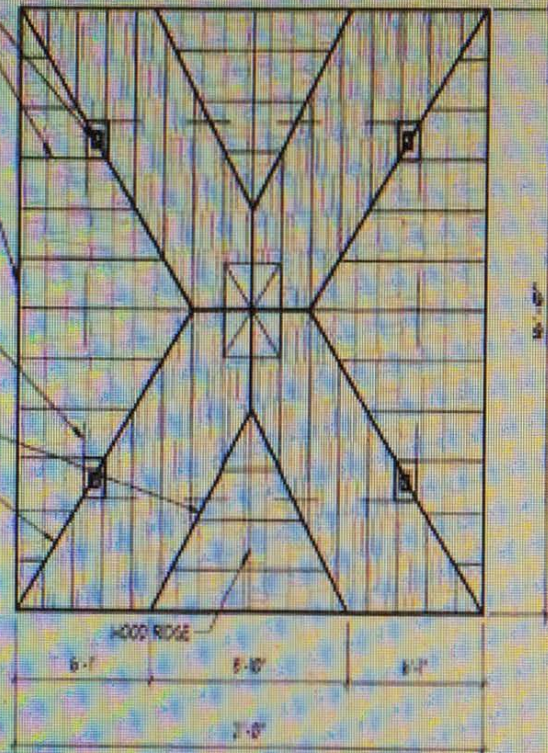
4x4 STEEL TUBE
RAFTERS @ 8" OC

PRIMARY STRUCTURAL FRAME
STEEL TUBE

SECONDARY STRUCTURAL
FRAME - COLUMN ALIGNMENT

VALLEY

RISE



POOLSIDE BAR CONCEPTUAL ROOF FRAMING PLAN

SCALE: 1/4" = 1'-0"



EACON

ARCHITECTURAL ASSOCIATES

145 South Street
Boston, MA 02111
T: 517.257.2121
www.eaconarchitects.com

Harbor View Hotel
Mayflower Cottage Poolside

Poolside Bar Floor Plan
& Roof Framing Plan

ASK-06A

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8.302

25. Plans

FOODSERVICE EQUIPMENT LAYOUT
SCALE: 1" = 1'-0"

NOTE: THE UTILITY SCHEDULE BELOW IS PRELIMINARY ONLY AND IS SUBJECT TO CHANGES DURING THE ONGOING DESIGN/DEVELOPMENT OF THE PROJECT. FINAL F.S. DRAWINGS WILL BE ISSUED ONCE TRIMARK HAS BEEN AWARDED THE EQUIPMENT CONTRACT.

[illegible]

TriMark
Sustainable Systems Architecture
UNITED STATES

WORLDWIDE

[illegible]

From our all-American,
anti-communist
demonstration of solidarity
in the white unity
committee with only
black army members and
others.

1997年12月15日

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**HARBORVIEW
POOLSIDE BAR**
EDGEMONT, MA

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CONCLUSIONS

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OF 100



**TOWN OF EDGARTOWN
BUILDING INSPECTOR'S OFFICE**

70 MAIN STREET, P.O. BOX 5158
EDGARTOWN, MASSACHUSETTS 02539-5158
508-827-5115 508-827-8119 (FAX)

Application

Date: 21 May 2019

Date

Issued: 31 MAY 2019

Permit

Number: 19-720

Fee: 1150.-

EXPRESS BUILDING PERMIT APPLICATION

Location of Project HARBOR VIEW HOTEL BOLEAR

Address: 131 NORTH WATER STREET EDGARTOWN, MASS
Number Street

Owner's Name: HARBOR VIEW HOTEL LLC

Assessor's Map: 208

☐ Residential

Parcel: 107

☐ Commercial

Mailing Address: EAST BOSTON STREET BOSTON, MA

Number/Street

City

State

Zip

Cost of Proposed Work: \$65,000.00

Type of Work

☐ Roofing ☐ Siding ☐ Windows ☐ Shed (May need ZBA approval)

☐ Roofing not applying more than one layer of shingles

Shed plans and plot plan required if applying for a shed - please attach to application

☐ Tent

Size of tent

Length - Width - Height

Date to be erected

Date to be removed

☐ Other

CONSTRUCT OUTDOOR BOLE BAR

(Description of other type of work)

Debris brought to:

ABC DEPOT

☐ Window size increases list header sizes

NEW BEDFORD MA

**PLEASE NOTE: APPLICATION CONTINUED ON THE
BACK OF THIS FORM**

Town of Edgartown - Express Building Permit Application

Last Updated: 02.10.2009

Page 1 of 2

Zoning

Zoning District: _____

Has the property or structure ever received a Variance or Special Permit from the Zoning Board of Appeals or the Planning Board? ☒ YES ☐ NO**IS THE PROPOSED DEVELOPMENT:**Within a District of Critical Planning Concern? ☐ YES ☐ NOWithin 200 feet of a Wetland? ☐ YES ☐ NOWithin the Historic District? ☐ YES ☐ NOIf yes, are there any exterior architectural alterations? ☐ YES ☐ NO**Applicant Information**Applicant Signature: [Signature] Date: 6/11/2019Applicant Phone #: (603) 961-7032 (D) (603) 400-5451 (C)Construction Supervisor's License Number: 040567 Exp. Date: 1/31/2019

Home Improvement Contractor's Reg. Number: _____ Exp. Date: _____

Specialty License Number: _____ Exp. Date: _____

Workman's Compensation Insurance (Check one)☐ I am the homeowner ☒ I am the sole proprietor ☐ I have workman's compensation insuranceInsurance Company Name: SCANDIA INSURANCE COMPANYWorkman's Compensation Policy Number: NCA 20621422 MA**PLEASE REMEMBER TO ATTACH SHED PLANS
AND PLOT PLAN IF APPLYING FOR A SHED****Description of Work (Please feel free to attach any pertinent documents to this application)**

CONSTRUCT FREESTANDING 8'x8' PER ATTACHED
DRAWINGS PREPARED BY BECKEN ARCHITECTURAL
ASSOCIATES LTD TRIMARK UNITED EAST.

TOWN OF EDGARTOWN

Building Inspector's Office
Edgartown, MA 02539

BUILDING PERMIT

P.O. Box 5150
(508) 627-6115

Permit No. 19-720

Date: 31 MAY 2019

Note: This permit is good for six (6) months. If construction has not begun in that time, the permit is expired and an extension or a new permit must be obtained.

Permission is hereby granted to HARBOR VIEW HOTEL OWNER, LLC

to: build (x) add () alter () move () demo () other () = POOL BAR

at 131 NORTH WATER STREET Assessors' Map 360 Lot 107

Description of work:

CONSTRUCT OUTDOOR POOL BAR

Alfred K...

BUILDING INSPECTOR

tabbies

4

EXHIBIT

EXHIBIT



TOWN OF EDGARTOWN
70 MAIN STREET, P.O. BOX 1065
EDGARTOWN, MASSACHUSETTS 02539-1065
www.edgartown-ma.us

TELEPHONE
(508) 627-6170

FAX
(508) 627-6123

ARTICLE VI. R-5 RESIDENTIAL DISTRICT

In an R-5 Residential District, no building or premises shall be used, and no building or part of a building shall be erected or altered, which is arranged, intended, or designed to be used in whole or in part for any uses except the following:

6.1 Permitted Uses

- a. Any use permitted in the R-80 District, except that the lot on which a guest house is constructed must have a minimum area of 15,000 square feet.
- b. Two-family dwelling on a lot, with the usual and necessary outbuildings incidental thereto, provided that the lot has an area of at least 15,000 square feet.

6.2 Conditionally Permitted Uses requiring a special permit from the Board of Appeals, in accordance with the regulations appearing in Article XV 15.4 and Article XI 11.6 of this By-Law.

- a. Conversion of an existing residential structure to a transient residential facility or to professional offices.
- b. Conversion of an existing one or two family residential structure to a maximum three dwelling unit structure, provided the following conditions are satisfied in all dwelling units.
 - 1) Adequate cooking facilities.
 - 2) Provision for electrical service, water supply and full plumbing.
 - 3) Provision for built-in heating, if unit is to be occupied 220 days or more per year.
 - 4) Minimum livable floor area of 400 square feet. Livable floor area shall be defined as all spaces within the exterior walls of a dwelling unit exclusive of garages, breezeways, unheated porches, cellars, and basements. Usable floor area shall include all spaces not otherwise excluded above, such as: principal rooms, utility rooms, bathrooms, all closets and hallways opening directly into any rooms within the dwelling unit.
 - 5) Separate internal entrances for each dwelling unit within the structure.
 - 6) A minimum of 1 1/2 off-street parking spaces per dwelling unit.
 - 7) Any other improvements required by the Board of Appeals
 - 8) Minimum lot size of 15,000 square feet.
- c. New construction of an inn or hotel.
- d. Small-scale business and industry, subject to the requirements of Section 11.6.b.
 - 1) No more than one dwelling unit in the structure, and said resident must fully comply with all the conditions in item b immediately preceding
 - 2) No more than one retail facility in the structure, not occupying more than 50% of the total gross floor area of the structure
 - 3) Parking shall consist of a minimum of four slots for each mixed use facility.
- e. Restaurants, whether of the commercial or private club type.
- f. Recreational use for profit.
- g. The taking of boarders or the leasing of rooms by a family residing on the premises, provided that there is no display or advertising except as regulated in this By-Law.
- h. Wind Energy Conversion System (WECS) as regulated by Section 24.
- i. Guest house larger than 900 square feet in total livable floor space, provided that all other requirements of 6.1.a are met.
- j. One guest house on a lot with a single family dwelling, which dwelling shall have been in existence for less than five years, provided that all other requirements of 6.1.a are met.



TOWN OF EDGARTOWN
70 MAIN STREET, P.O. BOX 1065
EDGARTOWN, MASSACHUSETTS 02539-1065
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FAX
(508) 627-6123

ARTICLE VI. R-5 RESIDENTIAL DISTRICT (continued)

6.3 Accessory Uses Permitted

Any accessory uses permitted in the R-60 District.

6.4 Bulk, Area and Parking Requirements

Minimum Requirements:

- Total Lot Area (square feet): 10,000
- Front Yard - Setback (feet): 20 feet*
- Side Yards (feet): 5
- Rear Yard (feet): 5
- Off-street Parking spaces per dwelling unit: 2
- There shall be a maximum of one 16' wide curb cut per lot on a public street. All new curb cuts, or modifications after January 7, 2014 shall require a site plan review from the Planning Board.

*However, no building need provide a front yard larger than the average of front yards of existing buildings on adjacent lots on the same side of the street.



ARTICLE IV. R-60 RESIDENTIAL DISTRICT

In the R-60 Residential District, no building or premises shall be used, and no building or part of a building shall be erected or altered, which is arranged, intended or designed to be used in whole or in part for any uses except the following:

4.1 Permitted Uses

- a. One single family detached dwelling on a lot with usual and necessary outbuilding incidental thereto.
- b. Religious and educational uses not for profit.
- c. Public parks, playground, fraternal buildings, municipal uses, and recreational buildings not for profit.
- d. Accessory uses customarily incidental to a permitted use on the same premises, including but not limited to the following:
 - 1) Use of a room or rooms in a dwelling for customary home, professional or medical occupations conducted by the resident occupants and their professional associate.
 - 2) Use of premises or building thereon in connection with his or her trade by a resident carpenter, electrician, painter, plumber, mason, fisherman, and other artisan, provided that no offensive noise, vibration, smoke, dust, odors, heat, glare, or unsightliness is produced, and provided that all accumulated building, construction, or other materials used in connection with the trade are screened from ground floor level of neighboring properties and from public and private ways, and provided that no more than two commercial vehicles are regularly stored or parked overnight on the property, and provided that any signs comply in full with the sign regulations of this By-law.
- e. The non-commercial use of wharves, piers and docks or waterfront property, except as noted above in d.2).
- f. One guest house on a lot with a single family dwelling, which dwelling shall have been in existence for not less than five years. Such guesthouse shall not be larger than 900 square feet in total livable floor space. The front, side, and rear set back requirements for a guest house shall be the same as those provided for a principal structure in the zoning district in which it is located. The lot on which a guest house is constructed must have a minimum area of 15,000 square feet. Either the original or subsequent building may be designated as a guest house.
- g. Any agricultural or horticultural use, and the sale of produce raised on the premises.

4.2 Conditionally Permitted Uses, requiring special permit from the Board of Appeals, in accordance with the regulations appearing in Article XVII 17.4 and Article XI 11.6 of this by-law.

- a. Conversion of an existing one family residential structure to accommodate two families, provided that the structure has been in existence for not less than five years and that the lot on which the structure is located has a minimum area of 15,000 square feet.
- b. Permanent removal of gravel, loam, clay, sand or stone under such safeguards as imposed by the Board of Appeals so as not to leave unsightly scars or be detrimental to the neighborhood.
- c. Private club operated for members only, not conducted for profit.
- d. Shops and storage buildings incidental to the building trades.
- e. Stand for the sale of primarily locally Island Grown produce, provided that no offensive noise, odors, unsightliness or traffic congestion is produced.
- f. Small-scale business and industry, subject to the requirements of Section 11.6b.
- g. Farm silo over 32 feet but not over 60 feet in height provided that it is set back enough to avoid accidentally falling or abutting land or dwelling.
- h. Wind Energy Conversion System (WECS) as regulated by Section 24.

ARTICLE IV. R-60 RESIDENTIAL DISTRICT (continued)



TOWN OF EDGARTOWN
70 MAIN STREET, P.O. BOX 1065
EDGARTOWN, MASSACHUSETTS 02539-1065
www.edgartown-ma.us

TELEPHONE
(508) 627-6170

FAX
(508) 627-6123

- i. Guest house larger than 900 square feet in total livable floor space provided that all other requirements of 4.1.f are met.
- j. One guest house on a lot with a single family dwelling; which dwelling shall have been in existence for less than five years, provided that all other requirements of 4.1.f are met.

4.3 Accessory Uses Permitted

- a. Garden house, tool house, greenhouse, playhouse, detached bedroom, tennis court, wading pool, temporary or permanent swimming pool incidental to the residential use of the premises and not operated for gain.
- b. Private garages for not more than three motor vehicles. All but one passenger automobile space in such garages may be leased to persons not resident on the premises.
- c. The grazing, housing and raising of livestock, horses and other animals provided that no part of the grazing or housing facilities are within the front yard of the lot and that the lot size is at least 60,000 square feet in area. The Building Inspector and/or the Board of Health may determine the maximum number of animals permitted on the lot.

4.4 Bulk, Area and Parking Requirements

Minimum Requirements:

- Total Lot Area - 1 1/2 Acres
- Front yard (Setback in feet) - 50 feet
- Side Yards (feet) - 25 feet
- Rear Yard (feet) - 25 feet
- Off-street parking - one for every two bedrooms

4.5 Prohibited Uses

Transient Residential Facilities



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11.8 Unregistered Cars

No person shall have more than one (1) unregistered car or truck ungaraged on the premises owned by him or under his control, and under no circumstances shall any unregistered or unsightly car or truck be stored in the front yard of said premises. This section shall not apply to premises covered by licenses issued under Sections 57 and 58 of Chapter 140 of the General Laws.

11.9 Nonconforming Structures and Uses

- a. Any structure or lawful use of any structure or premises or part thereof existing at the time of adoption of this by-law or an amendment thereto may be continued notwithstanding the fact that it may not conform to these regulations.
- b. This Zoning By-Law shall apply to the following:
 - 1) any change or substantial extension of a nonconforming use;
 - 2) reconstruction, extension or structural change of a nonconforming structure;
 - 3) any alteration of a structure, begun after the first publication of notice of public hearing of the By-Law to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent;
 - 4) a building or construction permit, Permit or Special Permit issued after the first publication of notice of public hearing of the By-Law;
 - 5) a nonconforming use or structure that is damaged by fire, hurricane or other catastrophe may be restored or rebuilt and used again as previously, provided that this is done within two (2) years, and that the rebuilding or restoration following the catastrophe is not greater in extent or in type of activity than the original;
 - 6) abandonment; a nonconforming use which has been abandoned for a period of two years shall not be reestablished and any future use shall conform with the By-Law;
 - 7) Changes: once changed to a conforming use, no structure shall be permitted to revert to a nonconforming use;
 - 8) except where this By-Law makes provision for Permit consideration;

Exemption: Where alteration, reconstruction, extension or structural change to a single family or two family residential structure does not increase the nonconforming nature, neither public hearing nor Special Permit from the Board of Appeals is required for said alteration, reconstruction, extension or structural change, provided that it conforms to all statutory and By-Law requirements in effect when the work was done.

- c. The Special Permit Granting Authority after a public hearing, notice of which shall have been given in accordance with Section 9 of the Zoning Act, may permit the use of a nonconforming use of a nonconforming structure to be converted to another use or nonconforming use, provided that such converted use is not, in the opinion of the Special Permit Granting Authority, more objectionable to the neighborhood than the original use, and conforms to the provisions of 11.6
- d. The Special Permit Granting Authority may after a public hearing, grant a Special Permit to allow a preexisting nonconforming use or structure to be expanded if where, in the opinion of the Board, such expansion will not be more objectionable to, or detrimental to, the character of the neighborhood than the original preexisting nonconforming use or structure.

ARTICLE XI. GENERAL REGULATIONS (continued)



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- e. The Special Permit Granting Authority shall have the authority to grant a special permit for the expansion, extension, or alteration of a preexisting, nonconforming use where such expansion, extension or alteration will not comply with the applicable provisions of the zoning bylaw; provided, however, that the Special Permit Granting Authority finds after a public hearing that such expansion, extension or alteration will be in harmony with other uses in the neighborhood; that such expansions, extension or alteration will not adversely affect the provisions of municipal or other public services; and that such expansion, extension or alteration will not be more objectionable or substantially more detrimental to the character of the neighborhood than the original nonconforming use.
- f. The Special Permit Granting Authority shall have the authority to grant a special permit for the change, extension or alteration of a preexisting, nonconforming structure, or for the construction of structures which are accessory to preexisting nonconforming structures, where such change, extension, alteration, or construction will not comply with the applicable provisions of the zoning bylaw; provided, however, that the Special Permit Granting Authority finds after a public hearing that other lots in the neighborhood have been previously developed by the construction of buildings or structures in such a manner as to have resulted in similar nonconformities, and that the proposed expansion, extension, alteration, or construction will not be more objectionable or substantially more detrimental to the character of the neighborhood than the original structure.

11.10 Temporary Structures and Uses.

Temporary structures and uses, if conforming to this by-law, shall be allowed subject to the same restrictions as permanent ones. Temporary structures not conforming to the requirements of this by-law may be allowed on a Special Permit granted by the Board of Appeals. The Board shall grant such a permit only upon its determination that nuisance, hazard, congestion and substantial harm to the neighborhood will be avoided and that the applicant has provided sufficient assurance that the proposed structure or use will be temporary. Such permit shall be granted for a period of six months or less and may be renewed only once, and only upon reapplication to the Board of Appeals.

11.11 Accessory Scientific Uses as permitted by Section 9 of Chapter 40A.

11.12 Eating Establishments

Eating establishments shall be subject to the following in all districts where allowed: No food shall be served on the premises outside of a building, except by a special permit from the Special Permit Granting Authority, in accordance with a regulation appearing in Article 11.6.a and Article 15.4 of this By-Law.

11.13 The conversion of a pre-existing, non-conforming Transient Residential Facility in the R-20, R-60 R-120 and RA-120 districts into a time-sharing or time-interval ownership dwelling unit is not permitted.

ARTICLE XI. GENERAL REGULATIONS (continued)

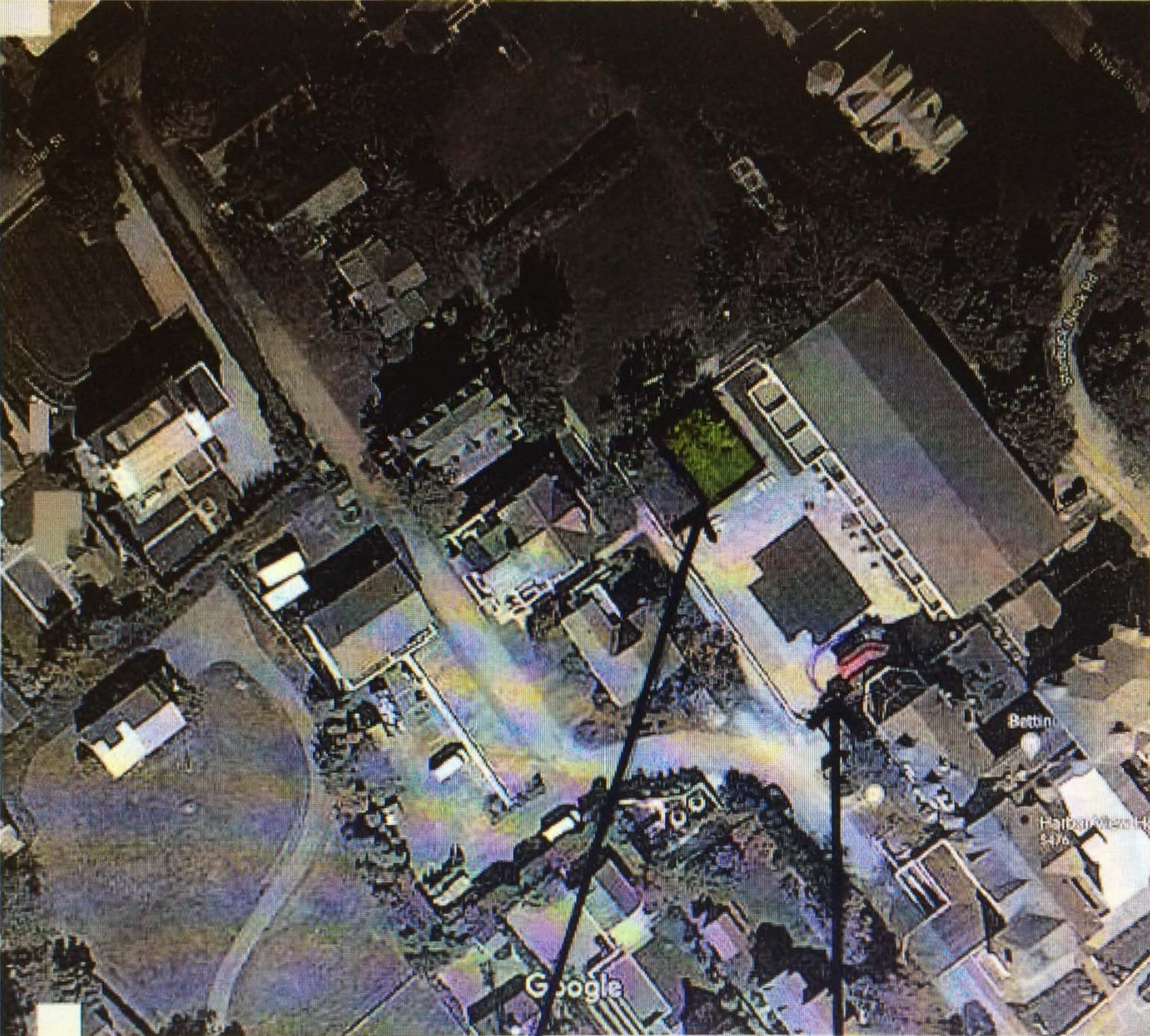
11.14 General Development Regulations



Google

Bettini

Harbor View
\$476



Google

Bettin

Harbor View Rd
\$476

6/20/2019

Harbor View Hotel - Google Maps


Google Maps

Harbor View Hotel

Birdseye View



Imagery ©2019 Google, Map data ©2019 50 ft

Proposed tiki
bar 
location.

Existing outdoor
pool bar

EXHIBIT

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Town of Edgartown
Office of
Zoning Board of Appeals
Edgartown, Massachusetts
22024

Edgartown, Mass.
Town Clerk's Office

David W. Jr.
Rec'd For Record
APR 11 1992

Case No: 18-92
Date Filed: March 6, 1992

DECISION OF THE ZONING BOARD OF APPEALS
ON THE APPLICATION OF
HARBOURVIEW HOTEL, N.V. ASSOCIATES

At a public hearing held in the Selectmen's Meeting Room, Town Hall, Main Street on April 8, 1992 at 7:30 p.m. the Edgartown Zoning Board of Appeals voted (5-0) to grant a special permit to continue to serve food and beverages in the pool area and further to serve food and beverages on "The Green". The following conditions were placed on this permit: 1) There will be no serving of food and beverages on the porch, although the consumption of food and beverages on the porch is permitted. 2) The outdoor service of food and beverages will be permitted in the pool area. 3) Service and entertainment on the green will cease no later than 10:30 p.m. 4) The green area will be cleared of guests and lights will be out no later than 11:00 p.m. 5) There will be no lighting of the green, lights will be in the tents only. 6) There will be no more than three night functions per week on the green. 7) There will be no more than three daytime functions per week on the green. 8) There will be no amplification of any kind on the grounds of the Harbourview. 9) This permit will be reviewed in October of 1992.

The decision of the Board of Appeals, together with each Board member's reasons for the decision and a record of all proceedings, are on file in the Office of the Town Clerk, Town Hall under Case No. 18-92.

Board of Appeals,

Pamela M. Dolby, Assistant

Note: This decision was filed in the Office of the Town Clerk together with the reasons for the decision, on April 16, 1992. Appeals, if any, should be made pursuant to Section 17 of Chapter 40A of the Massachusetts General Laws and should be filed within 20 days of the filing of this decision in the Office of the Town Clerk.

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EXHIBIT
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